

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In Re:)	
RICHARD BROWN MITCHELL, JR.)	Case No. 10-38146-DOT
)	Chapter 13
Debtor.)	

OBJECTION TO EXEMPTIONS AND NOTICE THEREOF

PLEASE TAKE NOTICE THAT John and Tiffany McAvoy have filed papers with the Court to object to certain exemptions claimed by the debtor.

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one, in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the relief sought in this objection, or if you want the Court to consider your views on the objection, then you or your attorney must:

Attend the hearing scheduled to be held on **April 20, 2011, at 11:00 a.m.**, before the Honorable Douglas O. Tice, Jr., Chief United States Bankruptcy Judge, Courtroom 5100, United States Courthouse, 701 E. Broad Street, Richmond, Virginia.

If you or your attorney do not take these steps, the Court may decide that you do not oppose this objection and may enter an order sustaining the objection.

OBJECTION TO EXEMPTIONS

John and Tiffany McAvoy, by counsel, for their objection to certain exemptions claimed by Richard Brown Mitchell, Jr. (the "Debtor"), respectfully state as follows:

1. The Court has jurisdiction pursuant to 28 U.S.C. § 1334, and this matter is a core proceeding as set forth under 28 U.S.C. § 157.

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2. On November 29, 2010, the Debtor filed a petition for relief under Chapter 13 of the United States Bankruptcy Code in this Court.

3. John and Tiffany McAvoy are listed as secured creditors in debtor's petition, having obtained a judgment in the Circuit Court of Westmoreland County, Virginia, against the debtor in the amount of \$178,514.00 plus accrued interest from February 25, 2010, for a total of \$189,635.67 as of March 11, 2011, and having properly docketed said judgment with the Circuit Court of Northumberland County, Virginia, on March 26, 2010, as Instrument Number 100000073.

4. The Debtor claims a \$1,499.00 exemption under Va. Code Ann. § 34-26(7) in a 14-foot Carolina Skiff (the "Boat"), declaring it necessary for use in the course of his occupation or trade.

5. However, on Schedule I of his petition, the Debtor lists as his occupation "Contractor."

6. In section 18 of his Statement of Financial Affairs ("SOFA"), the Debtor does claim to have operated a charter fishing business part-time until 2009 and full-time since 2009, yet in section 1 of his SOFA, the Debtor claims to have received no income from either employment or the operation of a business in 2008, 2009, or 2010.

7. The Debtor claims an \$8,500.00 exemption under Va. Code Ann. § 34-26(7) in a tool trailer, various saws and other tools, again declaring them necessary for use in the course of his occupation or trade.

8. In section 18 of his Statement of Financial Affairs ("SOFA"), the Debtor states that his business as a general contractor was active until March 16, 2010, that his contractor's license has been revoked, and that he works full-time on his charter fishing business.

9. Again, in section 1 of his SOFA, the Debtor claims to have received no income from employment or the operation of a business in 2008, 2009, or 2010.

10. In conclusion, by the Debtor's own admission, he is no longer actively engaged in the contracting business, nor has he received any income from either that business or the charter fishing business since 2007 or possibly earlier. Therefore, the exemptions claimed under Va. Code Ann. § 34-26(7) should be denied.

WHEREFORE, John and Tiffany McAvoy respectfully request that the Court enter an Order denying the exemptions claimed by the Debtor under Va. Code Ann. § 34-26(7), or alternatively, limiting the Debtor to an exemption for items necessary for use in one or the other alleged occupation, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

JOHN AND TIFFANY MCAVOY

DATE: March 14, 2011

By: /s/ W. Scott Dillard II
Of Counsel

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Certificate

I hereby certify that a true and correct copy of the foregoing was electronically delivered via ECF or mailed, postage pre-paid to the parties in interest listed below on this 14th day of March, 2011.

/s/ W. Scott Dillard II

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